

**United States Patent and Trademark Office (USPTO)  
Office Action (Official Letter) About Applicant's Trademark Application**

**U.S. Application Serial No.** 79365913

**Mark:** SHUFL

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**Applicant:** The Social Gaming Group IP B.V.

**Reference/Docket No.** N/A

**Correspondence Email Address:**

**NONFINAL OFFICE ACTION  
Notice of Provisional Full Refusal**

**International Registration No.** 1720506

**Deadline for responding.** The USPTO must receive applicant's response **within six months of the "date on which the notification was sent to WIPO (mailing date)"** located on the WIPO cover letter, or the U.S. application will be abandoned (see <https://www.uspto.gov/trademarks-application-process/abandoned-applications> for information on abandonment). To confirm the mailing date, go to the USPTO's Trademark Status and Document Retrieval (TSDR) database at <https://tsdr.uspto.gov/>, select "US Serial, Registration, or Reference No.," enter the U.S. application serial number in the blank text box, and click on "Documents." The mailing date used to calculate the response deadline is the "Create/Mail Date" of the "IB-1st Refusal Note."

Respond to this Office action using the USPTO's Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

**Discussion of provisional full refusal.** This is a provisional full refusal of the request for extension of protection to the United States of the international registration, known in the United States as a U.S. application based on Trademark Act Section 66(a). See 15 U.S.C. §§1141f(a), 1141h(c).

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issues below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

#### **SUMMARY OF ISSUES:**

- Section 2(d) Refusal - Likelihood of Confusion - Classes
- Identification of Goods and Services
- Email Address Required
- U.S. Trademark Counsel Required

#### **SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION - CLASSES**

Registration of the applied-for mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 4834106, 5747982, 6208385, and 6632627. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the attached registrations.

Applicant has applied for the mark SHUFL for:

- "Computer programs and software for use with sports, quizzes, games, electronic games, videogames, social gaming and arcade video game machines, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; computer programs and software for keeping scores; downloadable software applications for use with sports, quizzes, games, electronic games video games, social gaming and arcade video game machines, excluding software applications for card games, collectible card games, trading card games, educational card games and playing cards; downloadable software applications for keeping scores; electronic software for handheld devices and wireless devices for use with sports, quizzes, games, electronic games video games, social gaming and arcade video game machines, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; computer programs and software for ordering drinks, snacks and food; downloadable software applications for ordering drinks, snacks and food; computer programs and software for delivery of drinks, snacks and food; downloadable software applications for delivery of drinks, snacks and food; platform software; interactive multimedia computer game programs, excluding computer game programs for card games, collectible card games, trading card games, educational card

games and playing cards; interactive multimedia entertainment software; interactive game software, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; interactive video software; interactive multimedia computer programs; virtual and augmented reality software for playing virtual reality games, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; virtual and augmented reality software for use in mobile devices for integrating electronic data with real world environments; photographic, cinematographic, optical, weighing, measuring, signaling, checking and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; audio visual and photographic devices, namely, headsets for playing video games, scoring displays, video monitor controllers, interactive touch screen terminals, interactive graphic screens, virtual reality headsets and goggles; measuring, detecting, monitoring and controlling devices; data storage devices and media; data processing software; media content" in Class 009;

- "Toys, games, and playthings; shuffleboards; sporting articles and equipment; video game apparatus, arcade games, and amusement machines; shuffle board games; electronic shuffle board games; portable gaming devices; apparatus for electronic games adapted for use with an external display screen or monitor; video game apparatus, namely, gaming consoles, controllers and joysticks for video games, gaming keypads and gamepads; gymnastic articles; all the aforesaid excluding card games, collectible card games, trading card games, educational card games and playing cards" in Class 028; and
- "Entertainment services in the field of games, sports, music and dance; entertainment services in the field of games, sports, music and dance with the view of accommodating networking; electronic games services; interactive game services; online game services; social game services; arcade game services; virtual reality game services; virtual reality arcade services; arranging and conducting of sports and game competitions and events; arranging, conducting and organizing of (online) sports and game competitions, tournaments and events, all of the aforesaid services having no relation to card games, collectible card games, trading card games, educational card games and playing cards; organization of food and drink tasting events for entertainment and educational purposes; timing and scoring of games, quizzes and sports events; audio, video and multimedia production and photography; rental (leasing) of equipment for gaming, electronic gaming, video gaming, social gaming, arcade video gaming events, quizzes and sports events, all these services having no relation to card games, collectible card games, trading card games, educational card games and playing cards; providing of online electronic publications (not downloadable); ticket reservation services for entertainment, game, quizzes and sporting events; vocational guidance (educational or training advice) not in relation to card games, collectible card games, trading card games, educational card games and playing cards; all the aforementioned services also being provided via social media, the internet or a global computer

network; services as a nightclub; nightclub services with the view of accommodating networking" in Class 041.

Registrant Chapter Inc. owns U.S. Reg. No. 6208385 for the mark SHUFFLE for "Downloadable software for viewing personal photos" in Class 009.

Registrant SHUFFL, LLC owns U.S. Reg. No. 6632627 for the mark SHUFFLE for "Software as a service (SAAS) services featuring software for use in facilitating group communication, namely, software for use in managing and hosting meetings, group chats, and online forums" in Class 042.

Registrant Cartamundi Services owns U.S. Reg. No. 4834106 for the mark SHUFFLE and design for:

- "Computer game software and computer hardware; computer software platforms for playing games; electronic and computerized video games software; downloadable electronic greetings cards and trading cards, namely, digital trading cards in the nature of multimedia software recorded on magnetic media featuring games; downloadable electronic game programs; downloadable video and computer game programs in Class 009;
- "Games and playthings, namely, game cards; playing cards and cards for games" in Class 028; and
- "Information relating to entertainment, provided on-line from a computer database or the Internet" in Class 041.

Registrant SCHRÉDER owns U.S. Reg. No. 5747982 for the mark SHUFFLE for "Electronic control gears [ECGs] for LED lamps and light fixtures; light regulators being electric dimmers; antennas for wireless communications apparatus for modular and interactive lighting installations offering smart connected services, namely wireless internet connections, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; computer interface software for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; electrical charge controllers for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; wireless controllers to monitor and control the functioning of electronic

devices for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; electrical control, testing and monitoring apparatus for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; surveying apparatus and instruments for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; radio transmitters, receivers, and controllers for monitoring and controlling public lighting; wireless controllers to remotely monitor and control the function and status of other electrical, electronic, and mechanical devices or systems, namely, lighting systems excluding gaming apparatus; illumination regulators namely illumination regulators for modular and interactive lighting installations offering smart connected services; intercommunication apparatus for lighting installations; motion sensors for security lights; photoelectric sensors and detectors units for use in controlling the actuation and operation of lighting installations; humidity sensors with integrated digital and analogue output circuitry used in appliance and light industrial applications to sense both relative humidity and temperature environmental conditions; environmental monitoring system comprised of meters and sensors that measure pressure, humidity, temperature and includes alarm and reporting functions for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; day and night vision systems primarily comprising day and night sensors, day and night cameras, power sources, communication means, monitors and operating software for lighting installations; active infra-red sensors for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers" in Class 009.

Trademark Act Section 2(d) bars registration of an applied-for mark that is so similar to a registered mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the goods and/or services of the parties. *See* 15 U.S.C. §1052(d). Likelihood of confusion is determined on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) (called the “*du Pont* factors”). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). Any evidence of record related to those factors need be considered; however, “not all of the *DuPont* factors are relevant or of similar weight in every case.” *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)).

Although not all *du Pont* factors may be relevant, there are generally two key considerations in any likelihood of confusion analysis: (1) the similarities between the compared marks and (2) the relatedness of the compared goods and/or services. See *In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976) (“The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.”); TMEP §1207.01.

### Similarity of the Marks

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)), *aff’d per curiam*, 777 F. App’x 516, 2019 BL 343921 (Fed. Cir. 2019); TMEP §1207.01(b).

Applicant's mark is SHUFL in standard character form.

U.S. Reg. No. 6208385 is the mark SHUFFLE in standard character form.

U.S. Reg. No. 6632627 is the mark SHUFFL in standard character form.

U.S. Reg. No. 4834106 consists of the wording SHUFFLE and design.

U.S. Reg. No. 5747982 is the mark SHUFFLE in standard character form.

When evaluating a composite mark consisting of words and a design, the word portion is normally accorded greater weight because it is likely to make a greater impression upon purchasers, be remembered by them, and be used by them to refer to or request the goods and/or services. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581-82, 218 USPQ 198, 200 (Fed. Cir. 1983)); *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at \*41 (TTAB 2022) (quoting *Sabhnani v. Mirage Brands, LLC*, 2021 USPQ2d 1241, at \*31 (TTAB2021)); TMEP §1207.01(c)(ii). Thus, although marks must be compared in their entireties, the word portion is often considered the dominant feature and is accorded greater weight in determining whether marks are confusingly similar, even where the word portion has been disclaimed. *In re Viterra Inc.*, 671 F.3d at 1366-67, 101 USPQ2d at 1911 (citing *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1570-71, 218 USPQ2d 390, 395 (Fed. Cir. 1983)).

Here, the mark in U.S. Registration No. 4834106 does contain design; i.e., the stylized wording SHUFFLE overlapping a stylized playing card design. However, as noted above, it is typically the word portion of a composite mark that is given more weight as consumers will use the wording to request the goods and/or services. In the present case, consumers will use the wording SHUFFLE to request registrant's goods and services. Thus, this wording is considered the more dominant and significant portion of the registered mark for the purpose of determining likelihood of confusion.

Comparing the dominant literal elements in the respective marks, the applied-for mark is SHUFL; the dominant literal elements in U.S. Reg. Nos. 6208385, 4834106, and 5747982 are all SHUFFLE; and U.S. Reg. No. 6632627 is SHUFFL.

There is no correct pronunciation of a mark; thus, consumers may pronounce a mark differently than intended by the mark owner. *See In re Viterra, Inc.*, 671 F.3d 1358, 1367, 101 USPQ2d 1905, 1912 (Fed. Cir. 2012) (citing *Interlego AG v. Abrams/Gentile Entm't, Inc.*, 63 USPQ2d 1862, 1863 (TTAB 2002)); TMEP §1207.01(b)(iv). In the present case, the compared marks could clearly be pronounced the same. Such similarity in sound alone may be sufficient to support a finding that the compared marks are confusingly similar. *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007) (citing *Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 732, 156 USPQ 523, 526 (C.C.P.A. 1968)); TMEP §1207.01(b)(iv).

Here, applicant's mark merely employs minor spelling differences from the wording in the registered marks, including deleting the silent "E" and the second silent "F" in "shuffle."

Marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. *See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (holding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (holding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (holding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii).

Further, a

mark in typed or standard characters may be displayed in any lettering style; the rights reside in the wording or other literal element and not in any particular display or rendition. *See In re Viterra Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1909 (Fed. Cir. 2012); *In re Mighty Leaf Tea*, 601 F.3d 1342, 1348, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); 37 C.F.R. §2.52(a); TMEP §1207.01(c) (iii). Thus, a mark presented in stylized characters and/or with a design element generally will not avoid likelihood of confusion with a mark in typed or standard characters because the word portion could be presented in the same manner of display. *See, e.g., In re Viterra Inc.*, 671 F.3d at 1363, 101 USPQ2d at 1909; *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 1041, 216 USPQ 937, 939 (Fed. Cir. 1983) (stating that “the argument concerning a difference in type style is not viable where one party asserts rights in no particular display”).

In this case, would applicant's standard character mark be allowed to register, applicant would be able to display its mark in any lettering style and with any design elements, including that in U.S. Reg. No. 4834106, which would be likely to confuse consumers as to the source of the parties' related goods and/or services.

Quite simply, the applied-for mark is confusingly similar to the registered mark in terms of sound, appearance, and commercial impression.

### Relatedness of Goods and Services

The compared goods and/or services need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229

F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000); TMEP §1207.01(a)(i). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i); see *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at \*44 (TTAB 2022) (quoting *In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006)).

Applicant's identified goods and services are:

- "Computer programs and software for use with sports, quizzes, games, electronic games, videogames, social gaming and arcade video game machines, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; computer programs and software for keeping scores; downloadable software applications for use with sports, quizzes, games, electronic games video games, social gaming and arcade video game machines, excluding software applications for card games, collectible card games, trading card games, educational card games and playing cards; downloadable software applications for keeping scores; electronic software for handheld devices and wireless devices for use with sports, quizzes, games, electronic games video games, social gaming and arcade video game machines, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; computer programs and software for ordering drinks, snacks and food; downloadable software applications for ordering drinks, snacks and food; computer programs and software for delivery of drinks, snacks and food; downloadable software applications for delivery of drinks, snacks and food; platform software; interactive multimedia computer game programs, excluding computer game programs for card games, collectible card games, trading card games, educational card games and playing cards; interactive multimedia entertainment software; interactive game software, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; interactive video software; interactive multimedia computer programs; virtual and augmented reality software for playing virtual reality games, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; virtual and augmented reality software for use in mobile devices for integrating electronic data with real world environments; photographic, cinematographic, optical, weighing, measuring, signaling, checking and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; audio visual and photographic devices, namely, headsets for playing video games, scoring displays, video monitor controllers, interactive touch screen terminals,

- interactive graphic screens, virtual reality headsets and goggles; measuring, detecting, monitoring and controlling devices; data storage devices and media; data processing software; media content" in Class 009;
- "Toys, games, and playthings; shuffleboards; sporting articles and equipment; video game apparatus, arcade games, and amusement machines; shuffle board games; electronic shuffle board games; portable gaming devices; apparatus for electronic games adapted for use with an external display screen or monitor; video game apparatus, namely, gaming consoles, controllers and joysticks for video games, gaming keypads and gamepads; gymnastic articles; all the aforesaid excluding card games, collectible card games, trading card games, educational card games and playing cards" in Class 028; and
  - "Entertainment services in the field of games, sports, music and dance; entertainment services in the field of games, sports, music and dance with the view of accommodating networking; electronic games services; interactive game services; online game services; social game services; arcade game services; virtual reality game services; virtual reality arcade services; arranging and conducting of sports and game competitions and events; arranging, conducting and organizing of (online) sports and game competitions, tournaments and events, all of the aforesaid services having no relation to card games, collectible card games, trading card games, educational card games and playing cards; organization of food and drink tasting events for entertainment and educational purposes; timing and scoring of games, quizzes and sports events; audio, video and multimedia production and photography; rental (leasing) of equipment for gaming, electronic gaming, video gaming, social gaming, arcade video gaming events, quizzes and sports events, all these services having no relation to card games, collectible card games, trading card games, educational card games and playing cards; providing of online electronic publications (not downloadable); ticket reservation services for entertainment, game, quizzes and sporting events; vocational guidance (educational or training advice) not in relation to card games, collectible card games, trading card games, educational card games and playing cards; all the aforementioned services also being provided via social media, the internet or a global computer network; services as a nightclub; nightclub services with the view of accommodating networking" in Class 041.

The goods in U.S. Reg. No. 6208385 (SHUFFLE) are: "Downloadable software for viewing personal photos" in Class 009.

The services in U.S. Reg. No. 6632627 (SHUFFL) are: "Software as a service (SAAS) services featuring software for use in facilitating group communication, namely, software for use in managing and hosting meetings, group chats, and online forums" in Class 042.

The goods and services in U.S. Reg. No. 4834106 (SHUFFLE) and design are:

- "Computer game software and computer hardware; computer software platforms for playing games; electronic and computerized video games software; downloadable electronic greetings cards and trading cards, namely, digital trading cards in the nature of multimedia software recorded on magnetic media featuring games; downloadable electronic game programs; downloadable video and computer game programs in Class 009;
- "Games and playthings, namely, game cards; playing cards and cards for games" in Class 028; and
- "Information relating to entertainment, provided on-line from a computer database or the Internet" in Class 041.

The goods in U.S. Reg.No. 5747982 (SHUFFLE) are: "Electronic control gears [ECGs] for LED lamps and light fixtures; light regulators being electricdimmers; antennas for wireless communications apparatus for modular and interactive lighting installations offering smart connected services, namely wireless internet connections, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; computer interface software for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; electrical charge controllers for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; wireless controllers to monitor and control the functioning of electronic devices for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; electrical control, testing and monitoring apparatus for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4Gbase stations, pollution sensors, sound systems, motion detectors, network IP speakers; surveying apparatus and instruments for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; radio transmitters, receivers, and controllers for monitoring and controlling public lighting; wireless controllers to remotely monitor and control the function and status of other electrical, electronic, and mechanical devices or systems, namely, lighting systems excluding gaming apparatus; illumination regulators namely illumination

regulators for modular and interactive lighting installations offering smart connected services; intercommunication apparatus for lighting installations; motion sensors for security lights; photoelectric sensors and detectors units for use in controlling the actuation and operation of lighting installations; humidity sensors with integrated digital and analogue output circuitry used in appliance and light industrial applications to sense both relative humidity and temperature environmental conditions; environmental monitoring system comprised of meters and sensors that measure pressure, humidity, temperature and includes alarm and reporting functions for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; day and night vision systems primarily comprising day and night sensors, day and night cameras, power sources, communication means, monitors and operating software for lighting installations; active infra-red sensors for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers" in Class 009.

Determining likelihood of confusion is based on the description of the goods and services stated in the application and registrations at issue, not on extrinsic evidence of actual use. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1307, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 1325, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)).

In this case, the application uses broad wording to describe "Computer programs and software for use with sports, quizzes, games, electronic games, video games, social gaming and arcade video game machines, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards", "computer programs and software for keeping scores", "downloadable software applications for use with sports, quizzes, games, electronic games video games, social gaming and arcade video game machines, excluding software applications for card games, collectible card games, trading card games, educational card games and playing cards", "downloadable software applications for keeping scores", "electronic software for handheld devices and wireless devices for use with sports, quizzes, games, electronic games video games, social gaming and arcade video game machines, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards", "platform software", "interactive multimedia computer game programs, excluding computer game programs for card games, collectible card games, trading card games, educational card games and playing cards", "interactive multimedia entertainment software", "interactive game software, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards", "interactive video software", "interactive multimedia computer programs", "virtual and augmented reality software for playing virtual reality games,

excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards", "virtual and augmented reality software for use in mobile devices for integrating electronic data with real world environments", "photographic, cinematographic, optical, weighing, measuring, signaling, checking and teaching apparatus and instruments", "apparatus for recording, transmission or reproduction of sound or images", "audio visual and photographic devices, namely, headsets for playing video games, scoring displays, video monitor controllers, interactive touch screen terminals, interactive graphic screens, virtual reality headsets and goggles", "measuring, detecting, monitoring and controlling devices", "data storage devices and media", "data processing software", and "media content" in International Class 9, "Toys, games, and playthings...all the aforesaid excluding card games, collectible card games, trading card games, educational card games and playing cards" in International Class 28, and "Entertainment services in the field of games, sports, music and dance", "entertainment services in the field of games, sports, music and dance with the view of accommodating networking", "electronic games services", "interactive game services", "online game services", "social game services", "arcade game services", "virtual reality game services", "virtual reality arcade services", "arranging and conducting of sports and game competitions and events", "arranging, conducting and organizing of (online) sports and game competitions, tournaments and events, all of the aforesaid services having no relation to card games, collectible card games, trading card games, educational card games and playing cards", which presumably encompasses all goods and services of the type described, including registrants' more narrow "computer game software and computer hardware", "computer software platforms for playing games", "electronic and computerized video games software", "downloadable electronic greetings cards and trading cards, namely, digital trading cards in the nature of multimedia software recorded on magnetic media featuring games", "downloadable electronic game programs", "downloadable video and computer game programs", "Games and playthings, namely, game cards", "playing cards and cards for games", "information relating to entertainment, provided on-line from a computer database or the Internet" in U.S. Registration No. 4834106, the registrant's "antennas for wireless communications apparatus for modular and interactive lighting installations offering smart connected services, namely wireless internet connections, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers", "computer interface software for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers", "electrical charge controllers for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers", "wireless controllers to monitor and control the functioning of electronic devices for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution

sensors, sound systems, motion detectors, network IP speakers; electrical control, testing and monitoring apparatus for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers", "radio transmitters, receivers, and controllers for monitoring and controlling public lighting", "wireless controllers to remotely monitor and control the function and status of other electrical, electronic, and mechanical devices or systems, namely, lighting systems excluding gaming apparatus", "intercommunication apparatus for lighting installations", "motion sensors for security lights", "photoelectric sensors and detectors units for use in controlling the actuation and operation of lighting installations", "humidity sensors with integrated digital and analogue output circuitry used in appliance and light industrial applications to sense both relative humidity and temperature environmental conditions", "environmental monitoring system comprised of meters and sensors that measure pressure, humidity, temperature and includes alarm and reporting functions for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers", "day and night vision systems primarily comprising day and night sensors, day and night cameras, power sources, communication means, monitors and operating software for lighting installations", and "active infra-red sensors for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers " in U.S. Registration No. 5747982, the registrant's " Downloadable software for viewing personal photos " in U.S. Registration No. 6208385, and the registrant's " Software as a service (SAAS) services featuring software for use in facilitating group communication, namely, software for use in managing and hosting meetings, group chats, and online forums " in U.S. Registration No. 6632627 . See, e.g., *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at \*44 (TTAB 2022); *In re Solid State Design Inc.*, 125 USPQ2d 1409, 1412-15 (TTAB 2018); *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB 2015). Thus, applicant's and registrants' goods and services are legally identical. See, e.g., *In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1629 (TTAB 2018) (citing *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp., Inc.*, 648 F.2d 1335, 1336, 209 USPQ 986,988 (C.C.P.A. 1981); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014); *Baseball Am. Inc. v. Powerplay Sports Ltd.*, 71 USPQ2d 1844, 1847 n.9 (TTAB 2004)).

Additionally, the goods and services of the parties have no restrictions as to nature, type, channels of trade, or classes of purchasers and are "presumed to travel in the same channels of trade to the same class of purchasers." *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)); *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at \*49. Thus, applicant's and registrants' goods and services are related.

Consumers are likely to be confused by the use of similar marks on or in connection with goods and with services featuring or related to those goods. TMEP §1207.01(a)(ii); see *In re Detroit Athletic Co.*, 903 F.3d 1297, 1307, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (finding retail shops featuring sports team related clothing and apparel related to various clothing items, including athletic uniforms); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988) (finding retail grocery and general merchandise store services related to furniture); *In re United Serv. Distribs., Inc.*, 229 USPQ 237 (TTAB 1986) (finding distributorship services in the field of health and beauty aids related to skin cream); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (finding various items of men's, boys', girls' and women's clothing related to restaurant services and towels); *Steelcase Inc. v. Steelcare Inc.*, 219 USPQ 433 (TTAB 1983) (finding refinishing of furniture, office furniture, and machinery related to office furniture and accessories); *Mack Trucks, Inc. v. Huskie Freightways, Inc.*, 177 USPQ 32 (TTAB 1972) (finding trucking services related to motor trucks and buses).

Where evidence shows that the goods at issue have complementary uses, and thus are often used together or otherwise purchased by the same purchasers for the same or related purposes, such goods have generally been found to be sufficiently related such that confusion would be likely if they are marketed under the same or similar marks. See *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1567, 223 USPQ 1289, 1290 (Fed. Cir. 1984) (holding bread and cheese to be related because they are often used in combination and noting that “[s]uch complementary use has long been recognized as a relevant consideration in determining a likelihood of confusion”); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1272 (TTAB 2009) (holding medical MRI diagnostic apparatus and medical ultrasound devices to be related, based in part on the fact that such goods have complementary purposes because they may be used by the same medical personnel on the same patients to treat the same disease). Here, applicant's software, games and toys, and various entertainment services are highly complementary in nature with the registrants' software, computer hardware and other devices, and games-related goods and services.

The Trademark Trial and Appeal Board has also held that computer hardware products are related to computer software products, such that their marketing under the same or similar marks may be likely to cause source confusion. See *In re TIE/Commc'ns, Inc.*, 5 USPQ2d 1457, 1458 (TTAB 1987) (holding DATA STAR likely to cause confusion when used in connection with both registrant's “computer programs recorded on magnetic media” and applicant's “voice/data communications terminals and parts thereof”); *In re Epic Sys. Corp.*, 228 USPQ 213, 214-15 (TTAB 1985) (holding EPIC for computer software for use in health care facilities likely to be confused with EPIC DATA for “electronic data collection terminals and electronic data collection units”); *In re Teradata Corp.*, 223 USPQ 361, 362 (TTAB 1984) (holding Y NET for computer hardware likely to be confused with XYNET for computer software); *Alpha Indus., Inc. v. Alpha Microsystems*, 220 USPQ 67, 69, 71-72 (TTAB 1983) (holding ALPHAMICRO

for digital computer equipment and programs likely to be confused with ALPHA MICROWAVE for microwave components and subassemblies). Here, applicant's goods include not only software but electronic devices and computer hardware goods, which encompass or are also identified in U.S. Registration Nos. 4834106 and 5747982 .

The attached Internet evidence, consisting of webpages from Pokemon, Nintendo, and Uno, establishes that the same entity commonly manufactures, produces, or provides the relevant goods and services (i.e., game software, card games, etc.) and markets the goods and services under the same mark, the relevant goods and services are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use, and the goods and services are similar or complementary in terms of purpose or function. Thus, applicant's and registrants' goods and services are considered related for likelihood of confusion purposes. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

Furthermore, where the marks of the respective parties are identical or virtually identical, as in this case, the degree of similarity or relatedness between the goods and services needed to support a finding of likelihood of confusion declines. *See In re Country Oven, Inc.*, 2019 USPQ2d 443903, at \*5 (TTAB 2019) (citing *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1411 (TTAB 2015), *aff'd*, 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017)); TMEP §1207.01(a); *see also In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993).

Accordingly, because confusion as to source is likely, registration is refused under Trademark Act Section 2(d) based on a likelihood of confusion.

Although applicant's mark has been refused registration, applicant may respond to the refusal by submitting evidence and arguments in support of registration.

If applicant responds to the refusal, applicant must also respond to the requirements set forth below.

## **IDENTIFICATION OF GOODS AND SERVICES**

Certain wording in the identification of goods and services is indefinite and/or broad. The below tables summarize the issues in the identification according to

International Class and gives the trademark examining attorney's suggested amendments, should applicant wish to adopt them.

*NOTE:* In a Trademark Act Section 66(a) application, classification of goods and services may not be changed from that assigned by the International Bureau of the World Intellectual Property Organization. 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1904.02(b). Additionally, classes may not be added or goods and services transferred from one class to another in a multiple-class Section 66(a) application. 37 C.F.R. §2.85(d); TMEP §1401.03(d).

The identification is too broad and must be clarified because it includes international class heading for class 028 and could identify goods and/or services in more than the classes specified. *See* 37 C.F.R. §§2.85(e), (f), 2.32(a)(6); TMEP §§1401.02(a), 1401.08. The USPTO generally considers class headings, whose sole purpose is to indicate the subject matter and general scope of each international class of goods and/or services, to be too broadly worded to identify goods and/or services in a U.S. application. *See In re Societe Generale des Eaux Minerales de Vittel S.A.*, 1 USPQ2d 1296, 1298-99 (TTAB 1986), *rev'd on other grounds*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987); TMEP §§1401.08, 1402.01(c), 1402.07(a).

For amendments to identifications consisting of class headings, the scope of the identification is limited by both the ordinary meaning of the words and the international class assigned by the International Bureau of the World Intellectual Property Organization. *See* 37 C.F.R. §2.85(d), (f); TMEP §§1402.06(a), (b), 1402.07(a), 1904.02(c). Accordingly, applicant must amend the identification to specify goods and/or services that fall within (1) the ordinary meaning of the words in the class heading(s), and (2) the international classification of the heading(s). *See* 37 C.F.R. §2.32(a)(6); TMEP §§1402.06(a), (b), 1402.07(a), 1904.02(c).

Applicant may amend the identification to the revised language below, if accurate, including clarifying the wording in curly brackets below, to satisfy the requirement for a definite identification. In the proposed identification, the text in bold font provides suggested language and guidance for replacing the unacceptable wording in the identified class heading. For all goods and/or services proposed below, the goods and/or services represent only those that fall within the specified international class.

Applicant may adopt the following identification, if accurate:

Class 009: **Downloadable and recorded** computer **game** programs and software ~~for use with~~ **for playing video games featuring** sports, quizzes, games, electronic games, videogames, social gaming **games** and arcade video game machines **games**, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; **Downloadable and recorded** computer programs and software for keeping scores; downloadable software applications for use with sports, quizzes, games, electronic games video games, social gaming and arcade video game machines, **namely, software for {specify function of the software}** excluding software applications for card games, collectible card games, trading card games, educational card games and playing cards; downloadable software applications for keeping scores; **downloadable and recorded** electronic **game** software for handheld devices and wireless devices ~~for use with~~ **featuring** sports, quizzes, games, electronic games video games, social gaming and arcade video game machines, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; **downloadable and recorded** computer programs and software for ordering drinks, snacks and food; downloadable software applications for ordering drinks, snacks and food; **downloadable and recorded** computer programs and software for delivery of drinks, snacks and food; downloadable software applications for delivery of drinks, snacks and food; **downloadable computer** platform software **for {specify purpose or function of the software, e.g., word processing, playing video games}**; **downloadable** interactive multimedia computer game programs, excluding computer game programs for card games, collectible card games, trading card games, educational card games and playing cards; **downloadable** interactive multimedia entertainment software **featuring {specify entertainment purpose or function of software, e.g., software for playing video games, software for the playback of music and music videos}**; **downloadable** interactive game software, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; **downloadable** interactive video **game** software; **downloadable** interactive multimedia computer programs **for {specify the purpose or function of the software, e.g., word processing, playing video games}**; **downloadable** virtual and augmented reality software for playing virtual reality games, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; **downloadable** virtual and augmented reality software for use in mobile devices for integrating electronic data with real world environments **for the purpose of {specify purpose of software, e.g., locating vehicles, creating maps, and, if software is content- or field-specific, the content or field of use}**; photographic, cinematographic, optical, weighing, measuring, signaling, checking and teaching apparatus and instruments, **namely, {specify common commercial name of goods in Class 9, e.g., cameras, optical signaling cables}**; apparatus for recording, transmission or reproduction of sound or images;

audio visual and photographic devices, namely, headsets for playing video games, scoring displays **in the nature of** *{specify common commercial name of goods in Class 9, e.g., electronic scoreboards}*; measuring, detecting, monitoring and controlling devices, namely, *{specify goods in Class 9, e.g., pressure sensors, temperature gauges}*; data storage devices and media, namely, *{specify common commercial name of goods, e.g., blank tapes for storage of computer data, blank compact discs}*; downloadable data processing software; media content, namely, *{specify goods in Class 9, e.g., downloadable music files}*

Class 028: Toys, namely, *{specify type of toys, e.g., stuffed toys}*, games, namely, *{specify type of games, e.g., board games}*, and playthings, namely, *{specify type of playthings, e.g., puppet theaters}*; shuffleboards; sporting articles and equipment, namely, *{specify common commercial name of goods, e.g., spring boards, sports balls}*; video game apparatus, namely *{specify apparatus, e.g., arcade video game machines, hand-held consoles for playing video games, video game consoles}*, arcade games, and amusement game machines; *{specify goods in Class 28, e.g., shuffleboard game playing equipment, namely,}* shuffle board games; *{specify goods in Class 28, e.g., shuffleboard game playing equipment, namely,}* electronic shuffle board games; portable gaming devices being *{clarify, e.g., portable handheld game consoles incorporating telecommunication functions}*; apparatus for electronic games adapted for use with an external display screen or monitor; video game apparatus, namely, gaming consoles, controllers and joysticks for video games, gaming keypads and gamepads; gymnastic articles, namely, *{specify common commercial name of goods, e.g., gymnastic apparatus, gymnastic benches}*; all the aforesaid excluding card games, collectible card games, trading card games, educational card games and playing cards

Class 041: Entertainment services in the field of games, sports, music and dance, namely, *{clarify nature of the service, e.g., entertainment in the nature of soccer games, live musical theater performances}*; entertainment services in the field of games, sports, music and dance with the view of accommodating networking, namely, *{clarify nature of the service, e.g., entertainment in the nature of soccer games, live musical theater performances}*; electronic games services provided by means of the internet; interactive game services, namely, providing temporary use of non-downloadable interactive games for entertainment purposes; online game services, namely, providing online electronic games for entertainment purposes; social game services, namely, *{specify services, e.g., providing online electronic games, providing temporary use of non-downloadable electronic games}*; arcade game services, namely, *{specify e.g., amusement arcade services, virtual reality arcade services}*; virtual

reality game services **provided on-line from a computer network**; virtual reality arcade services; arranging and conducting of sports and game competitions and events; arranging, conducting and organizing of ~~(online)~~ **e-sports** and **electronic** game competitions, tournaments and events, all of the aforesaid services having no relation to card games, collectible card games, trading card games, educational card games and playing cards; organization of food and drink tasting events for entertainment and educational purposes; **competition refereeing and officiating, namely**, timing and scoring of games, quizzes and sports events; audio, video and multimedia production and photography; **game equipment rental, namely**, rental ~~(leasing)~~ of equipment for gaming, electronic gaming, video gaming, social gaming, arcade video gaming events, quizzes and sports events, all these services having no relation to card games, collectible card games, trading card games, educational card games and playing cards; providing of online **non-downloadable** electronic publications **in the nature of {indicate specific nature of publications, e.g., books, magazines, brochures, etc.}** in the field of **{indicate subject matter of the publications}** ~~(not downloadable)~~; **ticket reservation and booking for entertainment events, namely**, ticket reservation services for entertainment, game, quizzes and sporting events; vocational guidance ~~(educational or training advice)~~ not in relation to card games, collectible card games, trading card games, educational card games and playing cards; all the aforementioned services also being provided via social media, the internet or a global computer network; services as a nightclub; nightclub services with the view of accommodating networking

Class 043: Services for providing food and drink, namely, providing food and drink as part of hospitality services, restaurant, bar, pub services; services for providing food and drink, namely, providing food and drink as part of hospitality services, restaurant, bar, pub services with the view of accommodating networking; **Providing** temporary accommodation; catering of food and drink; take-away food and drink services; rental of **banquet and social function** venues for meetings, parties, exhibitions and seminars

*NOTE*: The above wording in **bold** is suggested wording, while the wording in **bold italics** represents instructions for applicant. Wording that has been **struck through** represents suggested deletions. Applicant should follow the instructions to fill in the blanks with acceptable identifications.

Applicant may amend the identification to clarify or limit the goods and/or services, but not to broaden or expand the goods and/or services beyond those in the original application or as acceptably amended. See 37 C.F.R. §2.71(a); TMEP §1402.06. Generally, any deleted goods and/or services may not later be reinserted. See TMEP §1402.07(e). Additionally, for applications filed under

Trademark Act Section 66(a), the scope of the identification for purposes of permissible amendments is limited by the international class assigned by the International Bureau of the World Intellectual Property Organization (International Bureau); and the classification of goods and/or services may not be changed from that assigned by the International Bureau. 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1904.02(b). Further, in a multiple-class Section 66(a) application, classes may not be added or goods and/or services transferred from one existing class to another. 37 C.F.R. §2.85(d); TMEP §1401.03(d).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable *U.S. Acceptable Identification of Goods and Services Manual*. See TMEP §1402.04.

## **EMAIL ADDRESS REQUIRED**

**Email address required.** Applicant must provide applicant's email address, which is a requirement for a complete application. See 37 C.F.R. §2.32(a)(2); TMEP §803.05(b). This email address cannot be identical to the primary correspondence email address of a U.S.-licensed attorney retained to represent applicant in this application. See TMEP §803.05(b).

## **U.S. TRADEMARK COUNSEL REQUIRED**

**Applicant is required to be represented by a U.S.-licensed attorney to respond to or appeal the provisional refusal** because applicant's domicile is located outside of the United States and applicant does not appear to be represented by a qualified U.S. attorney. 37 C.F.R. §2.11(a); TMEP §601.01(a). An applicant whose domicile is located outside of the United States or its territories must be represented by an attorney who is an active member in good standing of the bar of the highest court of a U.S. state or territory. 37 C.F.R. §2.11(a); TMEP §§601, 601.01(a). In this case, applicant's domicile is identified in the application as outside of the United States or its territories. For more information, see the U.S. Counsel webpage at <https://www.uspto.gov/trademark/laws-regulations/trademark-rule-requires-foreign-applicants-and-registrants-have-us> and Hiring a U.S.-licensed trademark attorney webpage at <https://www.uspto.gov/trademarks-getting-started/why-hire-private-trademark-attorney>.

**To appoint a U.S.-licensed attorney** in this application, applicant should submit a completed Trademark Electronic Application System (TEAS) Change Address or Representation form at <https://teas.uspto.gov/ccr/car>. The newly-appointed attorney must submit a TEAS Response to Examining Attorney Office Action form at <https://teas.uspto.gov/office/roa/> indicating that an appointment of attorney has been made and address all other refusals or requirements in this action. Alternatively, if applicant retains an attorney before filing the response, the attorney can respond to this Office action by using the appropriate TEAS response form and provide his or her attorney information in the form and sign it as applicant's attorney. *See* 37 C.F.R. §2.17(b)(1)(ii); TMEP §604.01.

**How to respond. Click to file a response to this nonfinal Office action.**

/Uka Onuoha/  
Trademark Examining Attorney  
Law Office 129  
(571) 270-5781  
Uka.Onuoha@USPTO.GOV

## **RESPONSE GUIDANCE**

- **Missing the response deadline to this letter will cause the application to abandon.** The response must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS maintenance or unforeseen circumstances could affect an applicant's ability to timely respond.
- **Responses signed by an unauthorized party** are not accepted and can **cause the application to abandon**. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with legal authority to bind a juristic applicant. If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find contact information for the supervisor** of the office or unit listed in the signature block.

**United States Patent and Trademark Office (USPTO)**  
**Office Action (Official Letter) About Applicant's Trademark Application**

**U.S. Application Serial No.** 79365913

**Mark:** SHUFL

**Correspondence Address:**

DLA Piper Nederland N.V.  
Amstelveenseweg 638  
NL-1081 JJ Amsterdam NETHERLANDS

**Applicant:** The Social Gaming Group IP B.V.

**Reference/Docket No.** N/A

**Correspondence Email Address:**

**NONFINAL OFFICE ACTION**  
**Notice of Provisional Full Refusal**

**International Registration No.** 1720506

**Deadline for responding.** The USPTO must receive applicant's response **within six months of the "date on which the notification was sent to WIPO (mailing date)"** located on the WIPO cover letter, or the U.S. application will be abandoned (see <https://www.uspto.gov/trademarks-application-process/abandoned-applications> for information on abandonment). To confirm the mailing date, go to the USPTO's Trademark Status and Document Retrieval (TSDR) database at <https://tsdr.uspto.gov/>, select "US Serial, Registration, or Reference No.," enter the U.S. application serial number in the blank text box, and click on "Documents." The mailing date used to calculate the response deadline is the "Create/Mail Date" of the "IB-1rst Refusal Note."

Respond to this Office action using the USPTO's Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

**Discussion of provisional full refusal.** This is a provisional full refusal of the request for extension of protection to the United States of the international registration, known in the United States as a U.S. application based on Trademark Act Section 66(a). See 15 U.S.C. §§1141f(a), 1141h(c).

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issues below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

**SUMMARY OF ISSUES:**

- Section 2(d) Refusal - Likelihood of Confusion - Classes
- Identification of Goods and Services
- Email Address Required
- U.S. Trademark Counsel Required

## SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION - CLASSES

Registration of the applied-for mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 4834106, 5747982, 6208385, and 6632627. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the attached registrations.

Applicant has applied for the mark SHUFL for:

- "Computer programs and software for use with sports, quizzes, games, electronic games, videogames, social gaming and arcade video game machines, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; computer programs and software for keeping scores; downloadable software applications for use with sports, quizzes, games, electronic games video games, social gaming and arcade video game machines, excluding software applications for card games, collectible card games, trading card games, educational card games and playing cards; downloadable software applications for keeping scores; electronic software for handheld devices and wireless devices for use with sports, quizzes, games, electronic games video games, social gaming and arcade video game machines, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; computer programs and software for ordering drinks, snacks and food; downloadable software applications for ordering drinks, snacks and food; computer programs and software for delivery of drinks, snacks and food; downloadable software applications for delivery of drinks, snacks and food; platform software; interactive multimedia computer game programs, excluding computer game programs for card games, collectible card games, trading card games, educational card games and playing cards; interactive multimedia entertainment software; interactive game software, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; interactive video software; interactive multimedia computer programs; virtual and augmented reality software for playing virtual reality games, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; virtual and augmented reality software for use in mobile devices for integrating electronic data with real world environments; photographic, cinematographic, optical, weighing, measuring, signaling, checking and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; audio visual and photographic devices, namely, headsets for playing video games, scoring displays, video monitor controllers, interactive touch screen terminals, interactive graphic screens, virtual reality headsets and goggles; measuring, detecting, monitoring and controlling devices; data storage devices and media; data processing software; media content" in Class 009;
- "Toys, games, and playthings; shuffleboards; sporting articles and equipment; video game apparatus, arcade games, and amusement machines; shuffle board games; electronic shuffle board games; portable gaming devices; apparatus for electronic games adapted for use with an external display screen or monitor; video game apparatus, namely, gaming consoles, controllers and joysticks for video games, gaming keypads and gamepads; gymnastic articles; all the aforesaid excluding card games, collectible card games, trading card games, educational card games and playing cards" in Class 028; and
- "Entertainment services in the field of games, sports, music and dance; entertainment services in the field of games, sports, music and dance with the view of accommodating networking; electronic games services; interactive game services; online game services; social game services; arcade game services; virtual reality game services; virtual reality arcade services; arranging and

conducting of sports and game competitions and events; arranging, conducting and organizing of (online) sports and game competitions, tournaments and events, all of the aforesaid services having no relation to card games, collectible card games, trading card games, educational card games and playing cards; organization of food and drink tasting events for entertainment and educational purposes; timing and scoring of games, quizzes and sports events; audio, video and multimedia production and photography; rental (leasing) of equipment for gaming, electronic gaming, video gaming, social gaming, arcade video gaming events, quizzes and sports events, all these services having no relation to card games, collectible card games, trading card games, educational card games and playing cards; providing of online electronic publications (not downloadable); ticket reservation services for entertainment, game, quizzes and sporting events; vocational guidance (educational or training advice) not in relation to card games, collectible card games, trading card games, educational card games and playing cards; all the aforementioned services also being provided via social media, the internet or a global computer network; services as a nightclub; nightclub services with the view of accommodating networking" in Class 041.

Registrant Chapter Inc. owns U.S. Reg. No. 6208385 for the mark SHUFFLE for "Downloadable software for viewing personal photos" in Class 009.

Registrant SHUFFL, LLC owns U.S. Reg. No. 6632627 for the mark SHUFFL for "Software as a service (SAAS) services featuring software for use in facilitating group communication, namely, software for use in managing and hosting meetings, group chats, and online forums" in Class 042.

Registrant Cartamundi Services owns U.S. Reg. No. 4834106 for the mark SHUFFLE and design for:

- "Computer game software and computer hardware; computer software platforms for playing games; electronic and computerized video games software; downloadable electronic greetings cards and trading cards, namely, digital trading cards in the nature of multimedia software recorded on magnetic media featuring games; downloadable electronic game programs; downloadable video and computer game programs in Class 009;
- "Games and playthings, namely, game cards; playing cards and cards for games" in Class 028; and
- "Information relating to entertainment, provided on-line from a computer database or the Internet" in Class 041.

Registrant SCHRÉDER owns U.S. Reg. No. 5747982 for the mark SHUFFLE for "Electronic control gears [ECGs] for LED lamps and light fixtures; light regulators being electric dimmers; antennas for wireless communications apparatus for modular and interactive lighting installations offering smart connected services, namely wireless internet connections, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; computer interface software for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; electrical charge controllers for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; wireless controllers to monitor and control the functioning of electronic devices for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors,

network IP speakers; electrical control, testing and monitoring apparatus for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; surveying apparatus and instruments for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; radio transmitters, receivers, and controllers for monitoring and controlling public lighting; wireless controllers to remotely monitor and control the function and status of other electrical, electronic, and mechanical devices or systems, namely, lighting systems excluding gaming apparatus; illumination regulators namely illumination regulators for modular and interactive lighting installations offering smart connected services; intercommunication apparatus for lighting installations; motion sensors for security lights; photoelectric sensors and detectors units for use in controlling the actuation and operation of lighting installations; humidity sensors with integrated digital and analogue output circuitry used in appliance and light industrial applications to sense both relative humidity and temperature environmental conditions; environmental monitoring system comprised of meters and sensors that measure pressure, humidity, temperature and includes alarm and reporting functions for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; day and night vision systems primarily comprising day and night sensors, day and night cameras, power sources, communication means, monitors and operating software for lighting installations; active infra-red sensors for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers" in Class 009.

Trademark Act Section 2(d) bars registration of an applied-for mark that is so similar to a registered mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the goods and/or services of the parties. *See* 15 U.S.C. §1052(d). Likelihood of confusion is determined on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) (called the “*du Pont* factors”). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). Any evidence of record related to those factors need be considered; however, “not all of the *DuPont* factors are relevant or of similar weight in every case.” *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)).

Although not all *du Pont* factors may be relevant, there are generally two key considerations in any likelihood of confusion analysis: (1) the similarities between the compared marks and (2) the relatedness of the compared goods and/or services. *See In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976) (“The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.”); TMEP §1207.01.

### Similarity of the Marks

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321,

110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)), *aff’d per curiam*, 777 F. App’x 516, 2019 BL 343921 (Fed. Cir. 2019); TMEP §1207.01(b).

Applicant's mark is SHUFL in standard character form.

U.S. Reg. No. 6208385 is the mark SHUFFLE in standard character form.

U.S. Reg. No. 6632627 is the mark SHUFFL in standard character form.

U.S. Reg. No. 4834106 consists of the wording SHUFFLE and design.

U.S. Reg. No. 5747982 is the mark SHUFFLE in standard character form.

When evaluating a composite mark consisting of words and a design, the word portion is normally accorded greater weight because it is likely to make a greater impression upon purchasers, be remembered by them, and be used by them to refer to or request the goods and/or services. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581-82, 218 USPQ 198, 200 (Fed. Cir. 1983)); *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at \*41 (TTAB 2022) (quoting *Sabhnani v. Mirage Brands, LLC*, 2021 USPQ2d 1241, at \*31 (TTAB 2021)); TMEP §1207.01(c)(ii). Thus, although marks must be compared in their entireties, the word portion is often considered the dominant feature and is accorded greater weight in determining whether marks are confusingly similar, even where the word portion has been disclaimed. *In re Viterra Inc.*, 671 F.3d at 1366-67, 101 USPQ2d at 1911 (citing *Giant Food, Inc. v. Nation’s Foodservice, Inc.*, 710 F.2d 1565, 1570-71, 218 USPQ2d 390, 395 (Fed. Cir. 1983)).

Here, the mark in U.S. Registration No. 4834106 does contain design; i.e., the stylized wording SHUFFLE overlapping a stylized playing card design. However, as noted above, it is typically the word portion of a composite mark that is given more weight as consumers will use the wording to request the goods and/or services. In the present case, consumers will use the wording SHUFFLE to request registrant's goods and services. Thus, this wording is considered the more dominant and significant portion of the registered mark for the purpose of determining likelihood of confusion.

Comparing the dominant literal elements in the respective marks, the applied-for mark is SHUFL; the dominant literal elements in U.S. Reg. Nos. 6208385, 4834106, and 5747982 are all SHUFFLE; and U.S. Reg. No. 6632627 is SHUFFL. There is no correct pronunciation of a mark; thus, consumers may pronounce a mark differently than intended by the mark owner. *See In re Viterra, Inc.*, 671 F.3d 1358, 1367, 101 USPQ2d 1905, 1912 (Fed. Cir. 2012) (citing *Interlego AG v. Abrams/Gentile Entm’t, Inc.*, 63 USPQ2d 1862, 1863 (TTAB 2002)); TMEP §1207.01(b)(iv). In the present case, the compared marks could clearly be pronounced the same. Such similarity in sound alone may be sufficient to support a finding that the compared marks are confusingly similar. *In re 1st USA Realty Prof’ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007) (citing *Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 732, 156 USPQ 523, 526 (C.C.P.A. 1968)); TMEP §1207.01(b)(iv). Here, applicant's mark merely employs minor spelling differences from the wording in the registered marks, including deleting the silent "E" and the second silent "F" in "shuffle."

Marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. See *Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (holding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (holding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (holding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii).

Further, a mark in typed or standard characters may be displayed in any lettering style; the rights reside in the wording or other literal element and not in any particular display or rendition. See *In re Viterra Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1909 (Fed. Cir. 2012); *In re Mighty Leaf Tea*, 601 F.3d 1342, 1348, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); 37 C.F.R. §2.52(a); TMEP §1207.01(c)(iii). Thus, a mark presented in stylized characters and/or with a design element generally will not avoid likelihood of confusion with a mark in typed or standard characters because the word portion could be presented in the same manner of display. See, e.g., *In re Viterra Inc.*, 671 F.3d at 1363, 101 USPQ2d at 1909; *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 1041, 216 USPQ 937, 939 (Fed. Cir. 1983) (stating that “the argument concerning a difference in type style is not viable where one party asserts rights in no particular display”). In this case, would applicant's standard character mark be allowed to register, applicant would be able to display its mark in any lettering style and with any design elements, including that in U.S. Reg. No. 4834106, which would be likely to confuse consumers as to the source of the parties' related goods and/or services.

Quite simply, the applied-for mark is confusingly similar to the registered mark in terms of sound, appearance, and commercial impression.

#### Relatedness of Goods and Services

The compared goods and/or services need not be identical or even competitive to find a likelihood of confusion. See *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000); TMEP §1207.01(a)(i). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i); see *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at \*44 (TTAB 2022) (quoting *In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006)).

Applicant's identified goods and services are:

- "Computer programs and software for use with sports, quizzes, games, electronic games, videogames, social gaming and arcade video game machines, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; computer programs and software for keeping scores; downloadable software applications for use with sports, quizzes, games, electronic games video games, social gaming and arcade video game machines, excluding software applications for card games, collectible card games, trading card games, educational card games and playing cards; downloadable software applications for keeping scores; electronic software for handheld devices and wireless devices for use with sports, quizzes, games, electronic games video games, social gaming and arcade video

game machines, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; computer programs and software for ordering drinks, snacks and food; downloadable software applications for ordering drinks, snacks and food; computer programs and software for delivery of drinks, snacks and food; downloadable software applications for delivery of drinks, snacks and food; platform software; interactive multimedia computer game programs, excluding computer game programs for card games, collectible card games, trading card games, educational card games and playing cards; interactive multimedia entertainment software; interactive game software, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; interactive video software; interactive multimedia computer programs; virtual and augmented reality software for playing virtual reality games, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; virtual and augmented reality software for use in mobile devices for integrating electronic data with real world environments; photographic, cinematographic, optical, weighing, measuring, signaling, checking and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; audio visual and photographic devices, namely, headsets for playing video games, scoring displays, video monitor controllers, interactive touch screen terminals, interactive graphic screens, virtual reality headsets and goggles; measuring, detecting, monitoring and controlling devices; data storage devices and media; data processing software; media content" in Class 009;

- "Toys, games, and playthings; shuffleboards; sporting articles and equipment; video game apparatus, arcade games, and amusement machines; shuffle board games; electronic shuffle board games; portable gaming devices; apparatus for electronic games adapted for use with an external display screen or monitor; video game apparatus, namely, gaming consoles, controllers and joysticks for video games, gaming keypads and gamepads; gymnastic articles; all the aforesaid excluding card games, collectible card games, trading card games, educational card games and playing cards" in Class 028; and
- "Entertainment services in the field of games, sports, music and dance; entertainment services in the field of games, sports, music and dance with the view of accommodating networking; electronic games services; interactive game services; online game services; social game services; arcade game services; virtual reality game services; virtual reality arcade services; arranging and conducting of sports and game competitions and events; arranging, conducting and organizing of (online) sports and game competitions, tournaments and events, all of the aforesaid services having no relation to card games, collectible card games, trading card games, educational card games and playing cards; organization of food and drink tasting events for entertainment and educational purposes; timing and scoring of games, quizzes and sports events; audio, video and multimedia production and photography; rental (leasing) of equipment for gaming, electronic gaming, video gaming, social gaming, arcade video gaming events, quizzes and sports events, all these services having no relation to card games, collectible card games, trading card games, educational card games and playing cards; providing of online electronic publications (not downloadable); ticket reservation services for entertainment, game, quizzes and sporting events; vocational guidance (educational or training advice) not in relation to card games, collectible card games, trading card games, educational card games and playing cards; all the aforementioned services also being provided via social media, the internet or a global computer network; services as a nightclub; nightclub services with the view of accommodating networking" in Class 041.

The goods in U.S. Reg. No. 6208385 (SHUFFLE) are: "Downloadable software for viewing personal photos" in Class 009.

The services in U.S. Reg. No. 6632627 (SHUFFL) are: "Software as a service (SAAS) services featuring software for use in facilitating group communication, namely, software for use in managing and hosting meetings, group chats, and online forums" in Class 042.

The goods and services in U.S. Reg. No. 4834106 (SHUFFLE) and design are:

- "Computer game software and computer hardware; computer software platforms for playing games; electronic and computerized video games software; downloadable electronic greetings cards and trading cards, namely, digital trading cards in the nature of multimedia software recorded on magnetic media featuring games; downloadable electronic game programs; downloadable video and computer game programs in Class 009;
- "Games and playthings, namely, game cards; playing cards and cards for games" in Class 028; and
- "Information relating to entertainment, provided on-line from a computer database or the Internet" in Class 041.

The goods in U.S. Reg. No. 5747982 (SHUFFLE) are: "Electronic control gears [ECGs] for LED lamps and light fixtures; light regulators being electric dimmers; antennas for wireless communications apparatus for modular and interactive lighting installations offering smart connected services, namely wireless internet connections, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; computer interface software for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; electrical charge controllers for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; wireless controllers to monitor and control the functioning of electronic devices for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; electrical control, testing and monitoring apparatus for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; surveying apparatus and instruments for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; radio transmitters, receivers, and controllers for monitoring and controlling public lighting; wireless controllers to remotely monitor and control the function and status of other electrical, electronic, and mechanical devices or systems, namely, lighting systems excluding gaming apparatus; illumination regulators namely illumination regulators for modular and interactive lighting installations offering smart connected services; intercommunication apparatus for lighting installations; motion sensors for security lights; photoelectric sensors and detectors units for use in controlling the actuation and operation of lighting installations; humidity sensors with integrated digital and analogue output circuitry used in appliance and light industrial applications to sense both relative humidity and temperature environmental conditions; environmental monitoring system comprised of meters and sensors that measure pressure, humidity, temperature and includes alarm and reporting functions for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors,

sound systems, motion detectors, network IP speakers; day and night vision systems primarily comprising day and night sensors, day and night cameras, power sources, communication means, monitors and operating software for lighting installations; active infra-red sensors for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers" in Class 009.

Determining likelihood of confusion is based on the description of the goods and services stated in the application and registrations at issue, not on extrinsic evidence of actual use. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1307, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 1325, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)).

In this case, the application uses broad wording to describe "Computer programs and software for use with sports, quizzes, games, electronic games, video games, social gaming and arcade video game machines, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards", "computer programs and software for keeping scores", "downloadable software applications for use with sports, quizzes, games, electronic games video games, social gaming and arcade video game machines, excluding software applications for card games, collectible card games, trading card games, educational card games and playing cards", "downloadable software applications for keeping scores", "electronic software for handheld devices and wireless devices for use with sports, quizzes, games, electronic games video games, social gaming and arcade video game machines, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards", "platform software", "interactive multimedia computer game programs, excluding computer game programs for card games, collectible card games, trading card games, educational card games and playing cards", "interactive multimedia entertainment software", "interactive game software, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards", "interactive video software", "interactive multimedia computer programs", "virtual and augmented reality software for playing virtual reality games, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards", "virtual and augmented reality software for use in mobile devices for integrating electronic data with real world environments", "photographic, cinematographic, optical, weighing, measuring, signaling, checking and teaching apparatus and instruments", "apparatus for recording, transmission or reproduction of sound or images", "audio visual and photographic devices, namely, headsets for playing video games, scoring displays, video monitor controllers, interactive touch screen terminals, interactive graphic screens, virtual reality headsets and goggles", "measuring, detecting, monitoring and controlling devices", "data storage devices and media", "data processing software", and "media content" in International Class 9, "Toys, games, and playthings...all the aforesaid excluding card games, collectible card games, trading card games, educational card games and playing cards" in International Class 28, and "Entertainment services in the field of games, sports, music and dance", "entertainment services in the field of games, sports, music and dance with the view of accommodating networking", "electronic games services", "interactive game services", "online game services", "social game services", "arcade game services", "virtual reality game services", "virtual reality arcade services", "arranging and conducting of sports and game competitions and events", "arranging, conducting and organizing of (online) sports and game competitions, tournaments and events, all of the aforesaid services having no relation to card games, collectible card games, trading card games, educational card games and playing cards", which presumably encompasses all goods and services of the type described, including registrants' more narrow "computer game software and computer hardware", "computer software platforms for playing games", "electronic and computerized video games software", "downloadable electronic greetings cards

and trading cards, namely, digital trading cards in the nature of multimedia software recorded on magnetic media featuring games", "downloadable electronic game programs", "downloadable video and computer game programs", "Games and playthings, namely, game cards", "playing cards and cards for games", "information relating to entertainment, provided on-line from a computer database or the Internet" in U.S. Registration No. 4834106, the registrant's "antennas for wireless communications apparatus for modular and interactive lighting installations offering smart connected services, namely wireless internet connections, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers", "computer interface software for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers", "electrical charge controllers for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers", "wireless controllers to monitor and control the functioning of electronic devices for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; electrical control, testing and monitoring apparatus for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers", "radio transmitters, receivers, and controllers for monitoring and controlling public lighting", "wireless controllers to remotely monitor and control the function and status of other electrical, electronic, and mechanical devices or systems, namely, lighting systems excluding gaming apparatus", "intercommunication apparatus for lighting installations", "motion sensors for security lights", "photoelectric sensors and detectors units for use in controlling the actuation and operation of lighting installations", "humidity sensors with integrated digital and analogue output circuitry used in appliance and light industrial applications to sense both relative humidity and temperature environmental conditions", "environmental monitoring system comprised of meters and sensors that measure pressure, humidity, temperature and includes alarm and reporting functions for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers", "day and night vision systems primarily comprising day and night sensors, day and night cameras, power sources, communication means, monitors and operating software for lighting installations", and "active infra-red sensors for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers" in U.S. Registration No. 5747982, the registrant's "Downloadable software for viewing personal photos" in U.S. Registration No. 6208385, and the registrant's "Software as a service (SAAS) services featuring software for use in facilitating group communication, namely, software for use in managing and hosting meetings, group chats, and online forums" in U.S. Registration No. 6632627. *See, e.g., Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at \*44 (TTAB 2022); *In re Solid State Design Inc.*, 125 USPQ2d 1409, 1412-15 (TTAB 2018); *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB 2015). Thus, applicant's and registrants' goods and services are legally identical. *See, e.g., In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1629 (TTAB 2018) (citing *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp., Inc.*, 648 F.2d 1335, 1336, 209 USPQ 986, 988 (C.C.P.A. 1981); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014); *Baseball Am. Inc. v. Powerplay Sports Ltd.*, 71 USPQ2d 1844, 1847 n.9 (TTAB 2004)).

Additionally, the goods and services of the parties have no restrictions as to nature, type, channels of

trade, or classes of purchasers and are “presumed to travel in the same channels of trade to the same class of purchasers.” *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)); *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at \*49. Thus, applicant’s and registrants’ goods and services are related.

Consumers are likely to be confused by the use of similar marks on or in connection with goods and with services featuring or related to those goods. TMEP §1207.01(a)(ii); see *In re Detroit Athletic Co.*, 903 F.3d 1297, 1307, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (finding retail shops featuring sports team related clothing and apparel related to various clothing items, including athletic uniforms); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988) (finding retail grocery and general merchandise store services related to furniture); *In re United Serv. Distribs., Inc.*, 229 USPQ 237 (TTAB 1986) (finding distributorship services in the field of health and beauty aids related to skin cream); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (finding various items of men’s, boys’, girls’ and women’s clothing related to restaurant services and towels); *Steelcase Inc. v. Steelcare Inc.*, 219 USPQ 433 (TTAB 1983) (finding refinishing of furniture, office furniture, and machinery related to office furniture and accessories); *Mack Trucks, Inc. v. Huskie Freightways, Inc.*, 177 USPQ 32 (TTAB 1972) (finding trucking services related to motor trucks and buses).

Where evidence shows that the goods at issue have complementary uses, and thus are often used together or otherwise purchased by the same purchasers for the same or related purposes, such goods have generally been found to be sufficiently related such that confusion would be likely if they are marketed under the same or similar marks. See *In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1567, 223 USPQ 1289, 1290 (Fed. Cir. 1984) (holding bread and cheese to be related because they are often used in combination and noting that “[s]uch complementary use has long been recognized as a relevant consideration in determining a likelihood of confusion”); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1272 (TTAB 2009) (holding medical MRI diagnostic apparatus and medical ultrasound devices to be related, based in part on the fact that such goods have complementary purposes because they may be used by the same medical personnel on the same patients to treat the same disease). Here, applicant’s software, games and toys, and various entertainment services are highly complementary in nature with the registrants’ software, computer hardware and other devices, and games-related goods and services.

The Trademark Trial and Appeal Board has also held that computer hardware products are related to computer software products, such that their marketing under the same or similar marks may be likely to cause source confusion. See *In re TIE/Commc’ns, Inc.*, 5 USPQ2d 1457, 1458 (TTAB 1987) (holding DATA STAR likely to cause confusion when used in connection with both registrant’s “computer programs recorded on magnetic media” and applicant’s “voice/data communications terminals and parts thereof”); *In re Epic Sys. Corp.*, 228 USPQ 213, 214-15 (TTAB 1985) (holding EPIC for computer software for use in health care facilities likely to be confused with EPIC DATA for “electronic data collection terminals and electronic data collection units”); *In re Teradata Corp.*, 223 USPQ 361, 362 (TTAB 1984) (holding Y NET for computer hardware likely to be confused with XYNET for computer software); *Alpha Indus., Inc. v. Alpha Microsystems*, 220 USPQ 67, 69, 71-72 (TTAB 1983) (holding ALPHA MICRO for digital computer equipment and programs likely to be confused with ALPHA MICROWAVE for microwave components and subassemblies). Here, applicant’s goods include not only software but electronic devices and computer hardware goods, which encompass or are also identified in U.S. Registration Nos. 4834106 and 5747982.

The attached Internet evidence, consisting of webpages from Pokemon, Nintendo, and Uno, establishes

that the same entity commonly manufactures, produces, or provides the relevant goods and services (i.e., game software, card games, etc.) and markets the goods and services under the same mark, the relevant goods and services are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use, and the goods and services are similar or complementary in terms of purpose or function. Thus, applicant's and registrants' goods and services are considered related for likelihood of confusion purposes. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

Furthermore, where the marks of the respective parties are identical or virtually identical, as in this case, the degree of similarity or relatedness between the goods and services needed to support a finding of likelihood of confusion declines. *See In re Country Oven, Inc.*, 2019 USPQ2d 443903, at \*5 (TTAB 2019) (citing *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1411 (TTAB 2015), *aff'd*, 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017)); TMEP §1207.01(a); *see also In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993).

Accordingly, because confusion as to source is likely, registration is refused under Trademark Act Section 2(d) based on a likelihood of confusion.

Although applicant's mark has been refused registration, applicant may respond to the refusal by submitting evidence and arguments in support of registration.

If applicant responds to the refusal, applicant must also respond to the requirements set forth below.

## **IDENTIFICATION OF GOODS AND SERVICES**

Certain wording in the identification of goods and services is indefinite and/or broad. The below tables summarize the issues in the identification according to International Class and gives the trademark examining attorney's suggested amendments, should applicant wish to adopt them.

*NOTE:* In a Trademark Act Section 66(a) application, classification of goods and services may not be changed from that assigned by the International Bureau of the World Intellectual Property Organization. 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1904.02(b). Additionally, classes may not be added or goods and services transferred from one class to another in a multiple-class Section 66(a) application. 37 C.F.R. §2.85(d); TMEP §1401.03(d).

The identification is too broad and must be clarified because it includes international class heading for class 028 and could identify goods and/or services in more than the classes specified. *See* 37 C.F.R. §§2.85(e), (f), 2.32(a)(6); TMEP §§1401.02(a), 1401.08. The USPTO generally considers class headings, whose sole purpose is to indicate the subject matter and general scope of each international class of goods and/or services, to be too broadly worded to identify goods and/or services in a U.S. application. *See In re Societe Generale des Eaux Minerales de Vittel S.A.*, 1 USPQ2d 1296, 1298-99 (TTAB 1986), *rev'd on other grounds*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987); TMEP §§1401.08, 1402.01(c), 1402.07(a).

For amendments to identifications consisting of class headings, the scope of the identification is limited by both the ordinary meaning of the words and the international class assigned by the International Bureau of the World Intellectual Property Organization. *See* 37 C.F.R. §2.85(d), (f); TMEP §§1402.06(a), (b), 1402.07(a), 1904.02(c). Accordingly, applicant must amend the identification to

specify goods and/or services that fall within (1) the ordinary meaning of the words in the class heading(s), and (2) the international classification of the heading(s). See 37 C.F.R. §2.32(a)(6); TMEP §§1402.06(a), (b), 1402.07(a), 1904.02(c).

Applicant may amend the identification to the revised language below, if accurate, including clarifying the wording in curly brackets below, to satisfy the requirement for a definite identification. In the proposed identification, the text in bold font provides suggested language and guidance for replacing the unacceptable wording in the identified class heading. For all goods and/or services proposed below, the goods and/or services represent only those that fall within the specified international class.

Applicant may adopt the following identification, if accurate:

**Class 009: Downloadable and recorded computer game programs and software ~~for use with for playing video games featuring~~ sports, quizzes, games, electronic games, videogames, social gaming games and arcade video game machines games, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; Downloadable and recorded computer programs and software for keeping scores; downloadable software applications for use with sports, quizzes, games, electronic games video games, social gaming and arcade video game machines, namely, software for {specify function of the software} excluding software applications for card games, collectible card games, trading card games, educational card games and playing cards; downloadable software applications for keeping scores; downloadable and recorded electronic game software for handheld devices and wireless devices ~~for use with featuring~~ sports, quizzes, games, electronic games video games, social gaming and arcade video game machines, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; downloadable and recorded computer programs and software for ordering drinks, snacks and food; downloadable software applications for ordering drinks, snacks and food; downloadable and recorded computer programs and software for delivery of drinks, snacks and food; downloadable software applications for delivery of drinks, snacks and food; downloadable computer platform software for {specify purpose or function of the software, e.g., word processing, playing video games}; downloadable interactive multimedia computer game programs, excluding computer game programs for card games, collectible card games, trading card games, educational card games and playing cards; downloadable interactive multimedia entertainment software featuring {specify entertainment purpose or function of software, e.g., software for playing video games, software for the playback of music and music videos}; downloadable interactive game software, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; downloadable interactive video game software; downloadable interactive multimedia computer programs for {specify the purpose or function of the software, e.g., word processing, playing video games}; downloadable virtual and augmented reality software for playing virtual reality games, excluding computer game software for card games, collectible card games, trading card games, educational card games and playing cards; downloadable virtual and augmented reality software for use in mobile devices for integrating electronic data with real world environments for the purpose of {specify purpose of software, e.g., locating vehicles, creating maps, and, if software is content- or field-specific, the content or field of use}; photographic, cinematographic, optical, weighing, measuring, signaling, checking and teaching apparatus and instruments, namely, {specify common commercial name of goods in Class 9, e.g., cameras, optical signaling cables}; apparatus for recording, transmission or reproduction of sound or images; audio visual and photographic devices, namely, headsets for playing video games,**

scoring displays **in the nature of** *{specify common commercial name of goods in Class 9, e.g., electronic scoreboards}*; measuring, detecting, monitoring and controlling devices, **namely,** *{specify goods in Class 9, e.g., pressure sensors, temperature gauges}*; data storage devices and media, **namely,** *{specify common commercial name of goods, e.g., blank tapes for storage of computer data, blank compact discs}*; **downloadable** data processing software; media content, **namely,** *{specify goods in Class 9, e.g., downloadable music files}*

Class 028: Toys, **namely,** *{specify type of toys, e.g., stuffed toys}*, games, **namely,** *{specify type of games, e.g., board games}*, and playthings, **namely,** *{specify type of playthings, e.g., puppet theaters}*; shuffleboards; sporting articles and equipment, **namely,** *{specify common commercial name of goods, e.g., spring boards, sports balls}*; video game apparatus, **namely** *{specify apparatus, e.g., arcade video game machines, hand-held consoles for playing video games, video game consoles}*, arcade games, and amusement **game** machines; *{specify goods in Class 28, e.g., shuffleboard game playing equipment, namely,}* shuffle board games; *{specify goods in Class 28, e.g., shuffleboard game playing equipment, namely,}* electronic shuffle board games; portable gaming devices **being** *{clarify, e.g., portable handheld game consoles incorporating telecommunication functions}*; apparatus for electronic games adapted for use with an external display screen or monitor; video game apparatus, **namely,** gaming consoles, controllers and joysticks for video games, gaming keypads and gamepads; gymnastic articles, **namely,** *{specify common commercial name of goods, e.g., gymnastic apparatus, gymnastic benches}*; all the aforesaid excluding card games, collectible card games, trading card games, educational card games and playing cards

Class 041: Entertainment services in the field of games, sports, music and dance, **namely,** *{clarify nature of the service, e.g., entertainment in the nature of soccer games, live musical theater performances}*; entertainment services in the field of games, sports, music and dance with the view of accommodating networking, **namely,** *{clarify nature of the service, e.g., entertainment in the nature of soccer games, live musical theater performances}*; electronic games services **provided by means of the internet**; interactive game services, **namely,** **providing temporary use of non-downloadable interactive games for entertainment purposes**; online game services, **namely,** **providing online electronic games for entertainment purposes**; social game services, **namely,** *{specify services, e.g., providing online electronic games, providing temporary use of non-downloadable electronic games}*; arcade game services, **namely,** *{specify e.g., amusement arcade services, virtual reality arcade services}*; virtual reality game services **provided on-line from a computer network**; virtual reality arcade services; arranging and conducting of sports and game competitions and events; arranging, conducting and organizing of ~~(online)~~ **e-sports** and **electronic** game competitions, tournaments and events, all of the aforesaid services having no relation to card games, collectible card games, trading card games, educational card games and playing cards; organization of food and drink tasting events for entertainment and educational purposes; **competition refereeing and officiating, namely,** timing and scoring of games, quizzes and sports events; audio, video and multimedia production and photography; **game equipment rental, namely,** rental ~~(leasing)~~ of equipment for gaming, electronic gaming, video gaming, social gaming, arcade video gaming events, quizzes and sports events, all these services having no relation to card games, collectible card games, trading card games, educational card games and playing cards; providing of online **non-downloadable** electronic publications **in the nature of** *{indicate specific nature of publications, e.g., books, magazines, brochures, etc.}* **in the field of** *{indicate subject matter of the publications}* ~~(not downloadable)~~; ticket reservation and booking for entertainment events, **namely,** ticket reservation services for entertainment, game, quizzes and sporting events;

vocational guidance (~~educational or training advice~~) not in relation to card games, collectible card games, trading card games, educational card games and playing cards; all the aforementioned services also being provided via social media, the internet or a global computer network; services as a nightclub; nightclub services with the view of accommodating networking

Class 043: Services for providing food and drink, namely, providing food and drink as part of hospitality services, restaurant, bar, pub services; services for providing food and drink, namely, providing food and drink as part of hospitality services, restaurant, bar, pub services with the view of accommodating networking; **Providing** temporary accommodation; catering of food and drink; take-away food and drink services; rental of **banquet and social function** venues for meetings, parties, exhibitions and seminars

*NOTE*: The above wording in **bold** is suggested wording, while the wording in *bold italics* represents instructions for applicant. Wording that has been ~~struck through~~ represents suggested deletions. Applicant should follow the instructions to fill in the blanks with acceptable identifications.

Applicant may amend the identification to clarify or limit the goods and/or services, but not to broaden or expand the goods and/or services beyond those in the original application or as acceptably amended. See 37 C.F.R. §2.71(a); TMEP §1402.06. Generally, any deleted goods and/or services may not later be reinserted. See TMEP §1402.07(e). Additionally, for applications filed under Trademark Act Section 66(a), the scope of the identification for purposes of permissible amendments is limited by the international class assigned by the International Bureau of the World Intellectual Property Organization (International Bureau); and the classification of goods and/or services may not be changed from that assigned by the International Bureau. 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1904.02(b). Further, in a multiple-class Section 66(a) application, classes may not be added or goods and/or services transferred from one existing class to another. 37 C.F.R. §2.85(d); TMEP §1401.03(d).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable *U.S. Acceptable Identification of Goods and Services Manual*. See TMEP §1402.04.

## EMAIL ADDRESS REQUIRED

**Email address required.** Applicant must provide applicant's email address, which is a requirement for a complete application. See 37 C.F.R. §2.32(a)(2); TMEP §803.05(b). This email address cannot be identical to the primary correspondence email address of a U.S.-licensed attorney retained to represent applicant in this application. See TMEP §803.05(b).

## U.S. TRADEMARK COUNSEL REQUIRED

**Applicant is required to be represented by a U.S.-licensed attorney to respond to or appeal the provisional refusal** because applicant's domicile is located outside of the United States and applicant does not appear to be represented by a qualified U.S. attorney. 37 C.F.R. §2.11(a); TMEP §601.01(a). An applicant whose domicile is located outside of the United States or its territories must be represented by an attorney who is an active member in good standing of the bar of the highest court of a U.S. state or territory. 37 C.F.R. §2.11(a); TMEP §§601, 601.01(a). In this case, applicant's domicile is identified in the application as outside of the United States or its territories. For more information, see the U.S. Counsel webpage at <https://www.uspto.gov/trademark/laws-regulations/trademark-rule-requires-foreign-applicants-and-registrants-have-us> and Hiring a U.S.-

licensed trademark attorney webpage at <https://www.uspto.gov/trademarks-getting-started/why-hire-private-trademark-attorney>.

**To appoint a U.S.-licensed attorney** in this application, applicant should submit a completed Trademark Electronic Application System (TEAS) Change Address or Representation form at <https://teas.uspto.gov/ccr/car>. The newly-appointed attorney must submit a TEAS Response to Examining Attorney Office Action form at <https://teas.uspto.gov/office/roa/> indicating that an appointment of attorney has been made and address all other refusals or requirements in this action. Alternatively, if applicant retains an attorney before filing the response, the attorney can respond to this Office action by using the appropriate TEAS response form and provide his or her attorney information in the form and sign it as applicant's attorney. *See* 37 C.F.R. §2.17(b)(1)(ii); TMEP §604.01.

**How to respond.** [Click to file a response to this nonfinal Office action.](#)

/Uka Onuoha/  
Trademark Examining Attorney  
Law Office 129  
(571) 270-5781  
Uka.Onuoha@USPTO.GOV

## RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to abandon.** The response must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS maintenance or unforeseen circumstances could affect an applicant's ability to timely respond.
- Responses signed by an unauthorized party are not accepted and can **cause the application to abandon**. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with legal authority to bind a juristic applicant. If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find** contact information for the supervisor of the office or unit listed in the signature block.

Print: Fri May 12 2023

88260144

(4) STANDARD CHARACTER MARK

SHUFFLE

Mark Punctuated  
SHUFFLE

Translation

Goods/Services

- IC 009. US 021 023 026 036 038.G & S: Downloadable software for viewing personal photos. FIRST USE: 20181116. FIRST USE IN COMMERCE: 20181116

Mark Drawing Code  
(4) STANDARD CHARACTER MARK

Design Code

Serial Number  
88260144

Filing Date  
20190114

Current Filing Basis  
1A

Original Filing Basis  
1A

Publication for Opposition Date  
20200915

Registration Number  
6208385

Date Registered  
20201201

Owner  
(REGISTRANT) Chapter Inc CORPORATION DELAWARE 100 Pine Street, Suite 1250 San Francisco CALIFORNIA 94111

Priority Date

Disclaimer Statement

Description of Mark

Type of Mark  
TRADEMARK

Register  
PRINCIPAL

Live Dead Indicator  
LIVE

Attorney of Record  
Feras Mousilli

Print: Fri May 12 2023

90570988

(4) STANDARD CHARACTER MARK

**SHUFFL**

Mark Punctuated

SHUFFL

Translation

Goods/Services

- IC 042. US 100 101.G & S: Software as a service (SAAS) services featuring software for use in facilitating group communication, namely, software for use in managing and hosting meetings, group chats, and online forums. FIRST USE: 20180817. FIRST USE IN COMMERCE: 20180817

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Design Code

Serial Number

90570988

Filing Date

20210310

Current Filing Basis

1A

Original Filing Basis

1A

Publication for Opposition Date

20211116

Registration Number

6632627

Date Registered

20220201

Owner

(REGISTRANT) SHUFFL LLC LIMITED LIABILITY COMPANY WASHINGTON 102 4317 Dayton Ave N  
Seattle WASHINGTON 98103

Priority Date

Disclaimer Statement

Description of Mark

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Attorney of Record

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS



Mark Punctuated  
SHUFFLE

Translation

Goods/Services

- IC 009. US 021 023 026 036 038.G & S: [ Apparatus for recording, transmission or reproduction of sound, images or other data; apparatus for receiving of sound, images or other data, namely, audiovisual receivers and mobile data receivers; magnetic, optical, numerical and electronic data carriers, namely, prerecorded magnetic data carriers featuring games; data processing equipment and computers; ] computer game software and computer hardware; computer software platforms for playing games; electronic and computerized video games software; downloadable electronic greetings cards and trading cards, namely, digital trading cards in the nature of multimedia software recorded on magnetic media featuring games; [ downloadable electronic publications in the nature of magazines and books in the field of games; downloadable electronic manuals and handbooks in the field of computer games; electronic diaries; electronic memo books in the nature of handheld computers; downloadable electronic books in the field of computer games, ] downloadable electronic game programs; [ downloadable audio and video recordings featuring games; downloadable music files; ] downloadable video and computer game programs [ ; downloadable digital music from the Internet; downloadable electronic game programs ]
- IC 028. US 022 023 038 050.G & S: Games and playthings, namely, game cards; playing cards and cards for games [ ; electronic hand-held game units; musical games, namely, musical arcade games; electronic playthings, namely, electronic learning toys; handheld electronic games, namely, hand held units for playing electronic games; apparatus for games, namely, handheld game consoles; decorations for Christmas trees ]
- IC 041. US 100 101 107.G & S: [ Education services, namely, providing classes, seminars and workshops in the field of card games; providing of training in the field of card games; entertainment, namely, providing an on-line board card game; provision of on-line entertainment, namely, providing on-line computer card games; providing of non-downloadable electronic publications online in the nature of magazines and books in the field of games; electronic publication of books and magazines online; games services provided online from a computer network, via computer databases or via the Internet, namely, providing online electronic games; providing information online relating to computer games and computer enhancements for games; providing information from an on-line computer database in the field of computer games; ] information relating to entertainment, provided on-line from a computer database or the Internet [ ; providing on-line music, not downloadable; arranging of online computer games via the Internet; rental of books, films and computer game programs; games equipment rental; rental of video games ]

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Code

210101 261120 261121

Serial Number  
79156054

Filing Date  
20140616

Current Filing Basis  
66A

Original Filing Basis  
66A

Publication for Opposition Date  
20150804

Registration Number  
4834106

Date Registered  
20151020

Owner  
(REGISTRANT) Cartamundi Services, naamloze vennootschap Naamloze Vennootschap BELGIUM  
Visbeekstraat 22 Turnhout BELGIUM B-2300

Priority Date  
20131216

Disclaimer Statement

Description of Mark

Color is not claimed as a feature of the mark. The mark consists of the word "SHUFFLE" overlapping a stylized playing card where the letters "H" and "L" are incorporated into the edge of the playing card.

Type of Mark  
TRADEMARK, SERVICE MARK

Register  
PRINCIPAL

Live Dead Indicator  
LIVE

Attorney of Record  
Clifford D. Hyra

## (4) STANDARD CHARACTER MARK

**SHUFFLE**

Mark Punctuated

SHUFFLE

Translation

Goods/Services

- IC 009. US 021 023 026 036 038.G & S: Electronic control gears [ECGs] for LED lamps and light fixtures; light regulators being electric dimmers; antennas for wireless communications apparatus for modular and interactive lighting installations offering smart connected services, namely wireless internet connections, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; computer interface software for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; electrical charge controllers for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; wireless controllers to monitor and control the functioning of electronic devices for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; electrical control, testing and monitoring apparatus for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; surveying apparatus and instruments for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; radio transmitters, receivers, and controllers for monitoring and controlling public lighting; wireless controllers to remotely monitor and control the function and status of other electrical, electronic, and mechanical devices or systems, namely, lighting systems excluding gaming apparatus; illumination regulators namely illumination regulators for modular and interactive lighting installations offering smart connected services; intercommunication apparatus for lighting installations; motion sensors for security lights; photoelectric sensors and detectors units for use in controlling the actuation and operation of lighting installations; humidity sensors with integrated digital and analogue output circuitry used in appliance and light industrial applications to sense both relative humidity and temperature environmental conditions; environmental monitoring system comprised of meters and sensors that measure pressure, humidity, temperature and includes alarm and reporting functions for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; day and night vision systems primarily comprising day and night sensors, day and night cameras, power sources, communication means, monitors and operating software for lighting installations; active infra-red sensors for modular and interactive lighting installations offering smart connected services to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers

- IC 011. US 013 021 023 031 034.G & S: Modular and interactive lighting installations offering multiple combination of smart connected services that connect to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; modular and interactive lighting installations with integrated features as loudspeakers, CCTV, WLAN, EV chargers and visual guidance; light-emitting diodes [LED] lighting apparatus for modular and interactive lighting installations offering combination of smart connected services that connect to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; light-emitting diode [LED] luminaires offering multiple combination of smart connected services; street lamps offering multiple combination of smart connected services; lamps for outdoor use offering multiple combination of smart connected services; LED light assemblies for street lights, signs, commercial lighting, buildings, and other architectural uses; LED lighting fixtures for modular and interactive lighting installations offering smart connected services that connect to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; lighting fixtures with motion detection for modular and interactive lighting installations offering smart connected services that connect to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; luminaires, using light emitting diodes [LEDs] as a light source, for street or roadway lighting offering multiple combination of smart connected services; smart and interactive lighting systems to encourage social connectivity in towns and cities comprised of modular and interactive lighting installations offering multiple combination of smart connected services that connect to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; innovative lighting solutions helping people to connect to their social environments both public and private, namely modular and interactive lighting installations offering multiple combination of smart connected services that connect to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers; lighting solutions for sustainable mobility, namely, modular and interactive lighting installations offering multiple combination of smart connected services that connect to wireless internet, cameras, loudspeakers, electric vehicle charges, SOS intercoms, 4G base stations, pollution sensors, sound systems, motion detectors, network IP speakers
- IC 037. US 100 103 106.G & S: Installation, maintenance and repair of lighting apparatus, lighting instruments and lighting systems offering smart connected services; installation, maintenance and repair of street lights offering smart connected services; advisory services relating to the installation of lighting apparatus, lighting instruments and lighting systems offering smart connected services; providing information relating to the repair or maintenance of lighting apparatus, lighting instruments and lighting systems offering smart connected services; installation, maintenance and repair of electronic control apparatus for lighting apparatus, lighting instruments and lighting systems; installation, maintenance and repair of regulating, monitoring and control apparatus for lighting apparatus, lighting instruments and lighting systems offering smart connected services; installation, maintenance and repair of computer network and information technology equipment for lighting apparatus, lighting instruments and lighting systems offering smart connected services; technical consultation in the field of installation of lighting apparatus, lighting instruments and lighting systems offering smart connected services; installation, maintenance and repair of computer hardware for lighting apparatus, lighting instruments and lighting systems offering smart connected services
- IC 042. US 100 101.G & S: Industrial design for lighting apparatus, lighting instruments and lighting systems offering smart connected services; technical consultancy in the field of light engineering; technical planning and consulting in the field of light engineering; technical planning and consultancy in the field of light engineering; computer software design in the field of light engineering; configuration,

installation, fault diagnosis, repair, updating, upgrading and maintenance of computer software in the field of light engineering; maintenance of database software in the field of light engineering; design, development, maintenance and updating of computer software for process control in the field of light engineering; configuration, installation, fault diagnosis, repair, upgrading and maintenance of computer software for lighting apparatus, lighting instruments and lighting systems offering smart connected services; development of computer software for use with computer-controlled switching systems for lighting apparatus, lighting instruments and lighting systems offering smart connected services; monitoring of computer systems by remote access in the field of light engineering; outsource service providers of information technology in the field of light engineering; hosting computerized data, files, applications and information in the field of light engineering

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Design Code

Serial Number

79238358

Filing Date

20180531

Current Filing Basis

66A

Original Filing Basis

66A

Publication for Opposition Date

20190226

Registration Number

5747982

Date Registered

20190514

Owner

(REGISTRANT) SCHRÉDER, société anonyme LIMITED LIABILITY COMPANY BELGIUM Rue de Lusambo 67 B-1190 Bruxelles BELGIUM

Priority Date

20171208

Disclaimer Statement

Description of Mark

Type of Mark

TRADEMARK, SERVICE MARK

Register

PRINCIPAL

Live Dead Indicator

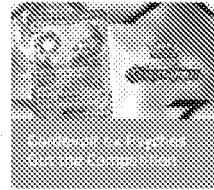
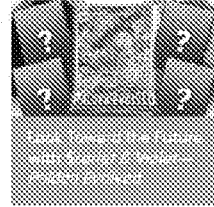
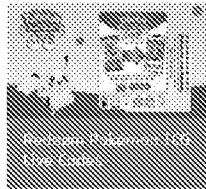
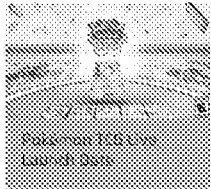
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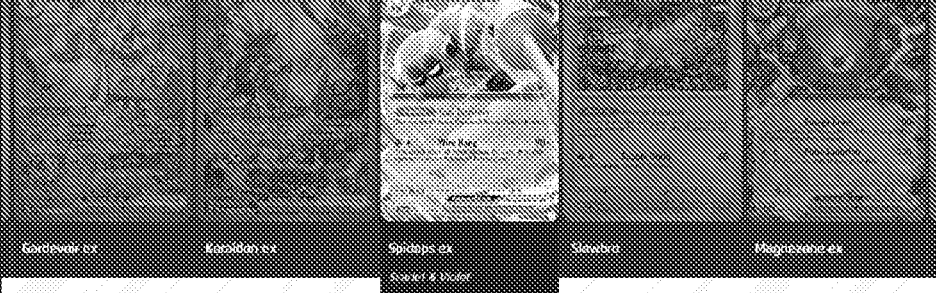
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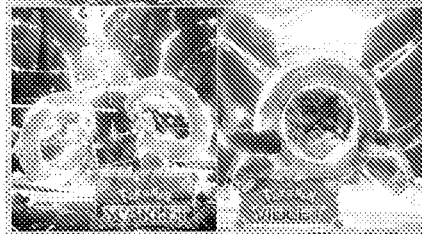
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Pokémon Trading Card Game Online

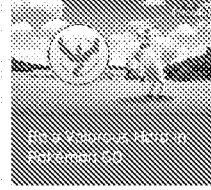
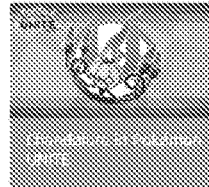
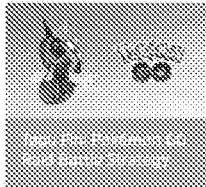




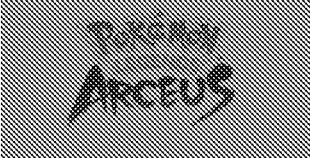
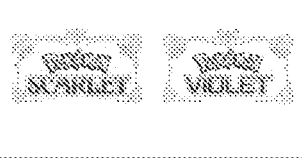
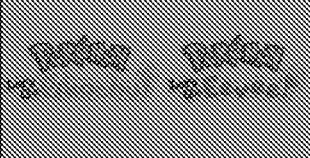
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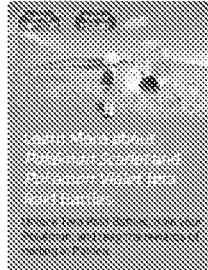


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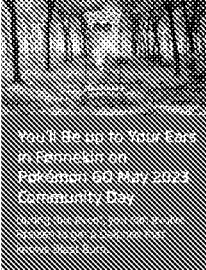
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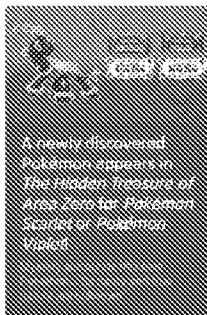
Learn More about Pokémon Scarlet and Pokémon Violet This Fall!

Experience the excitement of the new Pokémon games, Pokémon Scarlet and Pokémon Violet, this fall. These games offer a new way to play, with a focus on exploration and discovery. Learn more about the games and how to get them.



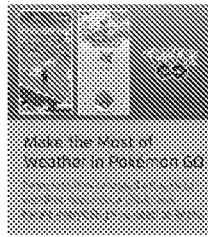
You'll Be up to Your Ears in Pokémon on May 2023 Community Day

Join us for a special Community Day event on May 20, 2023. We'll be celebrating the release of Pokémon Scarlet and Pokémon Violet with a special event. Learn more about the event and how to participate.



A newly discovered Pokémon appears in The Hidden Treasure of Area Zero for Pokémon Scarlet or Pokémon Violet

Discover a new Pokémon in the Hidden Treasure of Area Zero DLC for Pokémon Scarlet and Pokémon Violet. This DLC offers a new way to play, with a focus on exploration and discovery. Learn more about the DLC and how to get it.



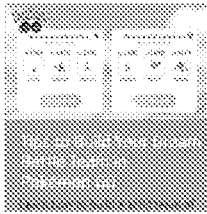
Make the Most of Weather in Pokémon GO

Learn how to make the most of weather in Pokémon GO. Weather can have a big impact on your Pokémon battles, so it's important to know how to use it to your advantage. Learn more about weather in Pokémon GO.



Relive the Fun of Pokémon Violet Game

Relive the fun of Pokémon Violet with the Pokémon Violet Game. This game offers a new way to play, with a focus on exploration and discovery. Learn more about the game and how to get it.



Learn More About the Pokémon Scarlet and Violet DLC

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Available in Nintendo Switch Game Theater. This game will be available on GamePad, when you play on TV or in Dock. GamePad will be used as controller.

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Join Mario, Luigi, and co. for some power-to-smash fun in two new adventures! This cute and family-friendly side-scrolling platformer will let you make friends or play by yourself. The new Super Mario Bros. U and Super Mario Bros. U Deluxe feature 12 games—each of which includes New and Old Toadette as playable characters.

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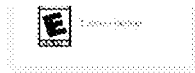


ESRB rating



Suggested play prices





TV



Switch



Smartphone

	Release date	January 11, 2018
	No. of players	Single Player (1)
	Genre	Adventure Action
	Publisher	Nintendo
	ESRB rating	Everyone
	Supported play modes	TV mode, tabletop mode, handheld mode
	Game file size	2.51 GB
	Supported languages	Dutch, English, French, German, Italian, Japanese, Korean, Portuguese, Russian, Simplified Chinese, Spanish, Traditional Chinese



Play online, access classic NES™ and Super NES™ games, and more with a Nintendo Switch Online membership.

This game supports [Link Data Cloud](#).



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UNO - Super Mario Bros.

\$5.99





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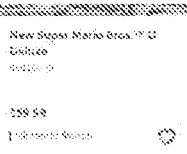
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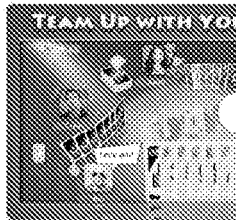
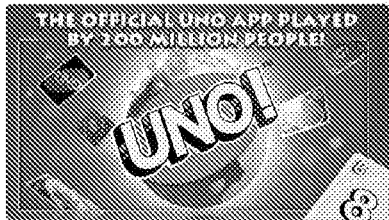
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Features:

• One of the best ways to play this game is to play it with a friend.

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Mod 12 1200

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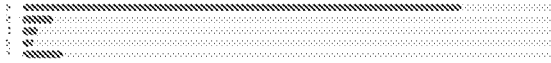
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4.5



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Godfather: Mafia Wars  
4.5



Monopoly: Board Game  
4.5



Uno: Card & Board Game  
4.5



Monopoly: Board Game  
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There are some people who are not happy with the way the game is being run. I have heard from some of them that they are not happy with the way the game is being run. I have heard from some of them that they are not happy with the way the game is being run.

The game is being run in a way that is not fair to all the players.

I have not been happy with the way the game is being run.

Math 101

Apr 20, 2022

There are some people who are not happy with the way the game is being run. I have heard from some of them that they are not happy with the way the game is being run. I have heard from some of them that they are not happy with the way the game is being run.

Math 101

3

Math 101

There are some people who are not happy with the way the game is being run. I have heard from some of them that they are not happy with the way the game is being run. I have heard from some of them that they are not happy with the way the game is being run.

I have not been happy with the way the game is being run.

I have not been happy with the way the game is being run.

Math 101

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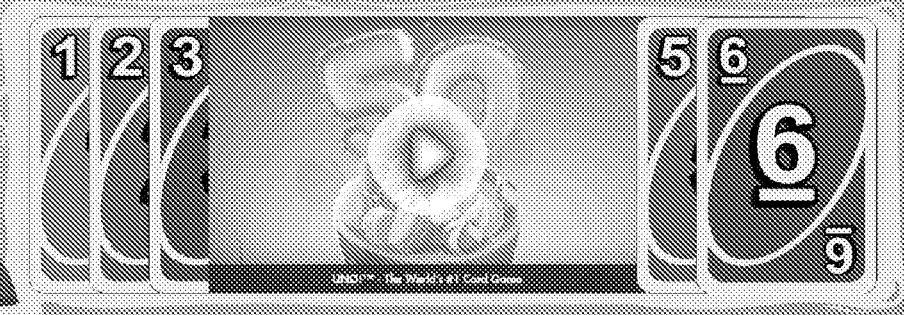
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Come and play one of the world's top  
card games!

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- 2. Buy a ticket
- 3. Arrive at the event
- 4. Participate in the event
- 5. Win prizes





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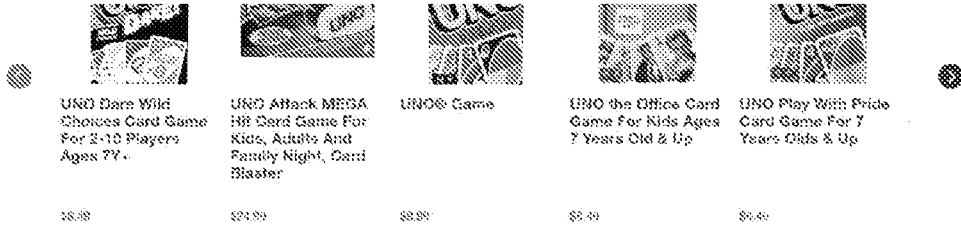
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#### Product Details

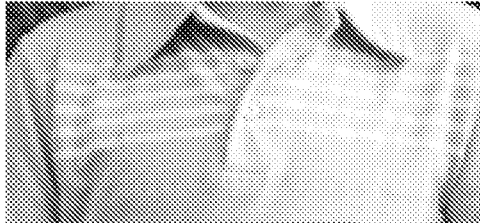
UNO™ is the classic family card game that's easy to pick up and impossible to put down. Players take turns matching a card in their hand with the current card shown on top of the deck either by color or number. Special action cards, like Skip, Reverse, Draw Two, and Change Color,...

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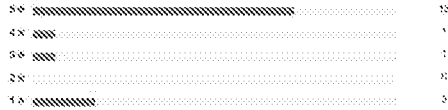
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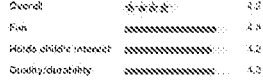
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Anonymous User

Long Island, NY

Reviewed 2/6

Was 20

Age of child purchased for: Family

Relationship to child: Family

🌟🌟🌟🌟 11 10/11/19

### Classic Card Game That NEVER Gets Old!

Fast paced family fun! This game just never gets old! The best part is that it is always anyone's game. A person can be close to winning, only to get blown in cards in the blink of an eye!

It is simple to learn, and is great for anyone that the more people you have playing, the better it gets! We have added an extra deck of UNO cards, even when it is only two or six players just to keep it interesting!

The best part is that you can play with players as young as 5, and as old as 100! Mattel recommends the game for ages 7 and up, but we have included younger kids who were able to grasp the game rules easily!

It is a hit during game night, fun to play at get together, and is easy to take along and play at the beach or any other time and place where you are looking for something easy to play that is suitable for large groups of people various ages!

I have spent time being in close quarters with new immigrants, and there is often language and culture barriers that limit the level, and quality of things you can do together, but UNO is one of those games that is easy to enjoy across language and cultural barriers, to bring people together for a fun time!

👍 **Pros:** High quality, durable, easy to learn

Recommend this product?  Yes

Original price of 121.20, now 124.00

Helpful?  Yes  No

Anonymous

Atlanta, GA

Reviewed 1

Was 18

Age of child purchased for: Family

🌟🌟🌟🌟 11 10/11/19

### Great Family Fun!

I bought UNO while on a family vacation to pass time - we had a BLAST! - now a 5 yr old and a 9 yr old - and we all really have a great time playing!! Great card game increases of education in a fun way!

Quality/Durability

Fun

Holds child's interest

Quality/Durability

Fun

Relationship to child: Parent

★★★★★ 11 years ago

**Pros:** High quality, Durable

Recommend this product  Yes

Originally posted on [Moose Card Game](#)

Helpful?  Yes  No

Pros

Helps Child's Interest

Kind

Relationship to child: Parent

Reviews 4

★★★★★

Reviews 2

★★★★★

Reviews 7

★★★★★ 11 years ago

### BEST STOCKING STUFFER EVER

This game is so easy and great, we make sure to always have it on hand when my kids have friends coming over or if we need a small gift for someone.

**Pros:** High quality

Recommend this product  Yes

Originally posted on [Moose Card Game](#)

Helpful?  Yes  No

Creativity/Durability

Fun

Helps Child's Interest

Kind

Relationship to child: Parent

Reviews 4

★★★★★

Reviews 2

★★★★★

Reviews 7

★★★★★ 11 years ago

Been gone in the mail quickly and is just so fun to play as it was when I was 10yo. *Ed* hubby like board games, so it's great if you have limited storage.

**Pros:** High quality, Durable

Recommend this product  Yes

Originally posted on [Moose Card Game](#)

Helpful?  Yes  No

Creativity/Durability

Fun

Helps Child's Interest





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